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GOVERNMENT OF INDIA

MINISTRY OF LAW

Dated New Delhi, the 18th September 1948.

ORDINANCE No. XXV of 1948.

AN

ORDINANCE

to provide for the control of banking companies

WHEREAS an emergency has arisen which makes it necessary to provide for the control of banking companies;

NOW, THEREFORE, in exercise of the powers conferred by section 42 of the Government of India Act, 1935 (26 Geo. 5, c. 2), the Governor-General is pleased to make and promulgate the following Ordinance:—

1. Short title, extent and commencement.—(1) This Ordinance may be called the Banking Companies (Control) Ordinance, 1948.

(2) It extends to the Provinces of India and also to every Acceding State to the extent to which the Dominion Legislature has power to make laws for that State as respects banking.

(3) It shall come into force at once.

2. Ordinance not to apply to co-operative banks.—Nothing in this Ordinance shall apply to a co-operative bank registered under the Co-operative Societies Act, 1912 (II of 1912), or any other law for the time being in force in any Province of India relating to co-operative societies.

3. Application of other laws not barred.—The provisions of this Ordinance shall be in addition to, and not, save as otherwise expressly provided herein, in derogation of the Indian Companies Act, 1913 (VII of 1913), and any other law for the time being in force applicable to banking companies

4. Definitions.—In this Ordinance,—

(a) "banking company" means a banking company as defined in section 277F of the Indian Companies Act, 1913 (VII of 1913), and includes the Imperial Bank of India and any body of persons incorporated by or under any law in force in any place outside the Provinces of India and carrying on the business of a banking company in any Province of India or any Acceding State;

(b) "Court" means the Court having jurisdiction under the Indian Companies Act, 1913;

(c) "prescribed" means prescribed by rules made under this Ordinance;

(d) "Reserve Bank" means the Reserve Bank of India;

(e) "secured loan or advance" means a loan or advance made on the security of assets the market value of which is not at any time less than the amount of such loan or advance; and

"unsecured loan or advance" means a loan or advance not so secured.

5. Power of Reserve Bank to control advances by banking companies.—

(1) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular and when the policy has been so determined all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.

(2) Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1), the Reserve Bank may give directions to banking companies either generally or to any banking company or group of banking companies in particular as to the purposes for which advances may or may not be made, the margins to be maintained in respect of secured advances and the rates of interest to be charged on advances, and each banking company shall be bound to comply with any directions as so given.

6. Restrictions on loans and advances.—(1) Notwithstanding anything to the contrary contained in section 54A of the Indian Companies Act, 1913 (VII of 1913), no banking company shall make any loans or advances on the security of its own shares or grant unsecured loans or advances to any of its directors or to firms or private companies in which it or any of its directors is interested as partner, director or managing agent, or to any individuals, firms or private companies in cases where any of the directors is a guarantor.

(2) Every banking company shall, before the close of the month succeeding that to which the return relates, submit to the Reserve Bank a return in the prescribed form and manner showing all unsecured loans and advances granted by it to companies, other than private companies, in which it or any of its directors is interested as director or managing agent or guarantor.

(3) If on examination of any return submitted under sub-section (2) it appears to the Reserve Bank that any loans or advances referred to in that sub-section are being granted to the detriment of the interests of the depositors of the banking company, the Reserve Bank may, by order in writing, prohibit the banking company from granting any such further loans or advances or impose such restrictions on the grant thereof as it thinks fit, and may, by like order, direct the banking company to secure the repayment of any such loans or advances within such time as may be specified in the order.

7. Assets in the Provinces of India.—(1) The assets in the Provinces of India of every banking company at the close of the last working day of every quarter shall not be less than seventy-five *per centum* of its demand and time liabilities therein.

(2) Every banking company shall, within one month from the end of every quarter, submit to the Reserve Bank a return in the prescribed form and manner of the assets and liabilities referred to in sub-section (1) as at the close of the last working day of the previous quarter.

(3) For the purposes of this section,—

(a) "assets" shall be deemed to include such promissory notes, bills of exchange and securities as the Reserve Bank is, under the Reserve Bank of India Act, 1934 (II of 1934), empowered to purchase, discount or make

advances against, and export bills drawn in India and expressed in such currencies as the Reserve Bank may from time to time approve in this behalf;

(b) "demand liabilities" means liabilities which must be met on demand, and

"time liabilities" means liabilities which are not demand liabilities;

(c) "quarter" means the period of three months ending on the last day of March, June, September or December.

8. Submission of monthly returns and information.—(1) Every banking company shall, before the close of the month succeeding that to which it relates, submit to the Reserve Bank a return in the prescribed form and manner showing its assets and liabilities in the Provinces of India as at the close of business on the last Friday of every month or if that Friday is a public holiday under the Negotiable Instruments A. t. 1881 (XVI of 1881), at the close of business on the preceding working day.

(2) Every banking company shall also submit to the Reserve Bank information every half year regarding the classification of advances and investments of such banking company in respect of industry commerce and agriculture, if the Reserve Bank so desires.

9. General powers and functions of the Reserve Bank.—(1) The Reserve Bank may—

(a) caution or prohibit banking companies generally or any banking company in particular against entering into any transaction or class of transactions;

(b) require banking companies generally, or any banking company in particular, to take or not to take such action in relation to any matter relating to the business of such banking company or companies as the Reserve Bank may think fit;

(c) on a request from the banking companies concerned and subject to the provisions of section 12 assist, as intermediary or otherwise, in proposals for the amalgamation of banking companies;

(d) after a banking company has been inspected under section 3 of the Banking Companies (Inspection) Ordinance, 1946 (IV of 1946), by order in writing, require the company,—

(i) to call a meeting of its directors for the purpose of considering matters arising out of such inspection or of meeting an officer of the Reserve Bank to discuss such matters; and

(ii) to make, within such time as may be specified in the order, such changes in its management as the Reserve Bank may consider necessary in consequence of the state of affairs disclosed by the inspection,

(e) by notice in writing require any banking company at any time to furnish it, within such time and in such manner as may be specified in the notice, with any statement or information relating to the business of such banking company.

(2) No person shall have any right, whether in contract or otherwise, to any compensation for any loss incurred by reason of the compliance by a banking company with any order given to it under sub-clause (ii) of clause (d) of sub-section (1).

10. Power to publish information.—The Reserve Bank, if it considers it in the public interest so to do, may publish any information obtained by it under section 8 or section 9 in such form as it thinks fit.

11. Reserve Bank to be official liquidator.—Notwithstanding anything contained in section 175 of the Indian Companies Act, 1913 (VII

of 1913), where in any proceeding for the winding up by the Court of a banking company an application is made by the Reserve Bank in this behalf, the Reserve Bank shall be appointed as the official liquidator of the banking company in such proceeding.

12. Restriction on amalgamation.—Notwithstanding anything contained in any law for the time being in force,—

(a) no Court shall entertain an application for sanctioning a compromise or arrangement between a banking company and its creditors or any class of them or between such company and its members or any class of them, unless the application made in respect thereof is accompanied by a report of the Reserve Bank certifying that such compromise or arrangement is not detrimental to the interests of the depositors of such company, and

(b) no banking company shall enter into any agreement or arrangement for, or be a party to, any scheme for the amalgamation of such company with any other banking company without the previous sanction in writing of the Reserve Bank.

13. Penalties.—(1) Whoever in any return, statement or other information required by or under this Ordinance, wilfully makes a statement which is false in any material particular knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) If any other provision of this Ordinance is contravened, or if any default is made in complying with any requirement of this Ordinance or any order made thereunder, every director and other officer of the banking company who is knowingly a party to the contravention or default shall be punishable with fine which may extend to five hundred rupees, and where the contravention or default is a continuing one, with a further fine which may extend to fifty rupees for every day during which it continues.

(3) Without prejudice to the provisions contained in sub-section (2), where a banking company has made default in complying with any requirement of this Ordinance or any order made thereunder, the Reserve Bank shall, by notice in writing, make a demand on the banking company to comply with the said requirement within thirty days from the receipt of the notice, and, if the banking company fails to do so, the Reserve Bank may apply to the Court for an order directing the winding up of such banking company; and where such an application has been made, the Court shall make an order accordingly.

14. Cognizance of offences.—No Court shall take cognizance of any offence punishable under section 13 except upon a complaint in writing made by an officer of the Reserve Bank generally or specially authorised in writing in this behalf by the Reserve Bank, and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.

15. Power to make rules.—(1) The Central Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for the form and manner in which returns of unsecured loans and advances under sub-section (2) of section 6, returns of assets and liabilities under sub-section (2) of section 7, and returns of assets and liabilities in the Provinces of India under section 8, may be submitted.

16. Amendment of certain enactments.—The enactments specified in the Schedule are hereby amended in the manner and to the extent mentioned in the fourth column thereof.

THE SCHEDULE

(See section 13)

1	2	3	4
1934	II	The Reserve Bank of India Act, 1934.	<p>In section 17, to clause (15A) the following shall be added, namely:—</p> <p>"and under the Banking Companies (Control) Ordinance, 1948 (XXV of 1948)".</p> <p>(a) Section 18 shall be renumbered as sub-section (1) of section 18 and in sub-section (1), as so renumbered,—</p> <p>(i) in clause (3), after the words "of that section", the following words shall be added, namely:—</p> <p>"or, when the loan or advance is made to a banking company, as defined in the Banking Companies (Control) Ordinance, 1948 (XXV of 1948), against such other form of security as the Bank may consider sufficient";</p> <p>(ii) for the words "under this section", wherever they occur, the words "under this sub-section" shall be substituted;</p> <p>(b) after sub-section (1), as so renumbered, the following shall be inserted as sub-section (2), namely:—</p> <p>"(2) Where a banking company to which a loan or advance has been made under the provisions of clause (3) of sub-section (1) is wound up, any sums due to the Bank in respect of such loan or advance shall, subject only to the claims, if any, of any other banking company in respect of any prior loan or advance made by such banking company against any security, be a first charge on the assets of the banking company."</p> <p>(c) The amendments made by this Ordinance in section 18 shall be deemed to have had effect on and from the 20th day of September, 1947.</p>
1946	XXVII	The Banking Companies (Restriction of Branches) Act, 1946.	<p>In section 2, for clause (a), substitute the following, namely:—</p> <p>"(a) 'banking company' means a banking company as defined in section 4 of the Banking Companies (Control) Ordinance, 1948 (XXV of 1948);".</p>
1946	Ord. IV	The Banking Companies (Inspection) Ordinance, 1946.	<p>In section 2, for clause (a), substitute the following, namely:—</p> <p>"(a) 'banking company' means a banking company as defined in section 4 of the Banking Companies (Control) Ordinance, 1948 (XXV of 1948);".</p> <p>In section 5, for the proviso to sub-section (1), substitute the following, namely:—</p> <p>"Provided that the Central Government may defer for such period as it may think fit the passing of an order under this sub-section or cancel or modify any such order upon such terms and conditions as it may think fit to impose."</p>

C. RAJAGOPALACHARI,
Governor-General.

K. Y. BHANDARKAR,
Secy. to the Govt. of India.

